

21455

02/22/07 09:20 AM
RN 07 09720 PAGE 1

AUTHOR'S COPY

An act to amend Section 273a of the Penal Code, relating to corporal punishment.



0972021455

21455

02/22/07 09:20 AM
RN 07 09720 PAGE 2

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 273a of the Penal Code is amended to read:

273a. (a) The Legislature hereby finds and declares that child abuse is a major social problem and that children in the age group of birth to three years suffer the highest rate of victimization. Child fatalities are the most tragic consequence of maltreatment, and the vast majority of children killed are younger than four years old. Fatal abuse is too often the result of hitting or shaking by caregivers under the guise of discipline. Infants and toddlers are the most vulnerable because of their tender age and inability to defend themselves or ask for help. It is therefore wholly reasonable that the integrity and sanctity of their bodies should be afforded the greatest protection possible under the law.

(a)

(b) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b)

(c) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care



0972021455

21455

02/22/07 09:20 AM
RN 07 09720 PAGE 3

or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

(d) If the infliction of physical pain or mental suffering occurred as a result of any of the following, then there is a rebuttable presumption that the physical pain or mental suffering is unjustifiable:

(1) The use of an implementation, including, but not limited to, a stick, a rod, a switch, an electrical cord, an extension cord, a belt, a broom, or a shoe.

(2) Throwing, kicking, burning, or cutting a child.

(3) Striking a child with a closed fist.

(4) Striking a child under the age of three on the face or head.

(5) Vigorous shaking of a child under the age of three.

(6) Interference with a child's breathing.

(7) Threatening a child with a deadly weapon.

(e)

(e) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 48 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) (A) Successful completion of either a nonviolent parental education class approved by the probation department or no less than one year of a child abuser's treatment counseling program approved by the probation department. The court shall



0972021455

21455

02/22/07 09:20 AM
RN 07 09720 PAGE 4

determine whether the parenting class or the treatment counseling program is most appropriate under the circumstances of each particular case and order the defendant to complete the one which is the most appropriate. The defendant shall be ordered to begin participation in either the class or the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(B) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime



0972021455

21455

02/22/07 09:20 AM
RN 07 09720 PAGE 5

or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

- 0 -



0972021455

21455

02/22/07 09:20 AM
RN 07 09720 PAGE 1

AUTHOR'S COPY

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, Lieber.

General Subject: Corporal punishment.

Existing law makes it a crime for any person, under specified circumstances, to willfully cause or permit a child to suffer, or inflicts on a child unjustifiable physical pain or mental suffering.

This bill would create a rebuttable presumption that if the physical pain or mental suffering results from the use of an implementation, throwing, kicking, burning, or cutting a child, striking a child with a closed fist, striking a child under the age of 3 on the face or head, vigorous shaking of a child under the age of 3, interference with a child's breathing, or threatening a child with a deadly weapon, then it is unjustifiable. This bill would also authorize the court to order a person convicted of this offense into a nonviolent parental education class as a condition of probation, if appropriate.

By changing the definition and punishment for a crime, the bill would impose a state-mandated local program.



0972021455

21455

02/22/07 09:20 AM
RN 07 09720 PAGE 2

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



0972021455